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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,824	03/15/2002	Charles L. Wallace	PURIT:60555	4079

24201 7590 05/17/2005

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EXAMINER	
NGUYEN, LE V	

ART UNIT	PAPER NUMBER
2174	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/099,824	WALLACE ET AL.	
	Examiner	Art Unit	
	Le Nguyen	2174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 February 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *7-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This communication is responsive to an amendment filed 2/7/05.

2. Claims 7-13 are pending in this application. Claim 7 is independent; claims 1-6 are cancelled; and, claims 7-13 are newly added. Due to the examiner's treatment of the claims of 3/15/02 instead of the preliminary amendment of 3/15/02, this action is made non-final.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 and 13 recite the limitation "the time scale associated with the inspiration and expiration bar is rescaled to be compatible with *the* combinations of *the* times on *the* bar." in lines 11 and 14 of page 3. There is insufficient antecedent basis for this limitation in the claim. It is unclear if by "the combinations of the times on the bar", applicant meant the combinations of the times on the inspiration bar, the expiration bar, or both, or if by "the combinations of the times on the bar", applicant meant a

combination of time increments on a bar representing a range or length of time, i.e. increments on the time scale. The examiner will interpret "the combinations of the times on the bar" to mean time increments on the time scale in the context of a breath cycle (inspiration and expiration) being graphed on the time scale with time increments.

Claim Rejections - 35 USC § 103

6. Claims 7, 2, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilmore et al. ("Gilmore") in view of Biondi et al. ("Biondi").

As per claim 7, Gilmore teaches a system for programming a respirator for ventilating a patient, the system including a programmable controller responsive to selected ventilation parameters for controlling the respirator to ventilate the patient (Abstract; fig. 1) and for storing a plurality of ventilation parameters (Abstract; fig. 2; col. 8, lines 20-29; col. 9, lines 41-48), a display for displaying a plurality of ventilation parameters currently used by the controller to control the respirator and a plurality of proposed ventilation parameters (figs. 1, 4-8 and 12; col. 9, line 41 through col. 10, line 10), and input means cooperating with the controller and the display for selecting one of the proposed ventilation parameters from the plurality of proposed ventilation parameters (figs. 4-8 and 12; col. 9, line 41 through col. 10, line 10; col. 11, lines 15-17 and 21-29; col. 11, lines 10-30; col. 13, line 8 through col. 14, line 27). Gilmore does not explicitly disclose the display including a graphical representation of the effect of the proposed ventilation parameters on the breath cycle. Biondi teaches a system for programming a respirator for ventilating a patient, the system including a graphical

representation of the effect of the proposed ventilation parameters on the breath cycle (figs. 5, 7-10, 13 and 16; col. 6, lines 1-63). Therefore, it would have been obvious to an artisan at the time of the invention to include Biondi's teaching of a graphical representation of the effect of the proposed ventilation parameters on the breath cycle in a system for programming a respirator for ventilating a patient to Gilmore's teaching of a display for displaying a plurality of ventilation parameters currently used by the controller to control the respirator in a system for programming a respirator for ventilating a patient in order to provide assurance that input information is being processed properly.

As per claim 8, the modified Gilmore teaches a system for programming a respirator for ventilating a patient wherein the display includes a graphical representation of the ventilation parameters currently used (Biondi: figs. 5, 7-10, 13 and 16; col. 6, lines 1-63).

As per claim 9, the modified Gilmore teaches a system for programming a respirator for ventilating a patient wherein the display includes a graphical representation of the proposed ventilation parameters of a breath cycle (Gilmore: figs. 4, 5 and 12; Biondi: figs. 5, 7-10, 13 and 16; col. 6, lines 1-63).

7. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilmore et al. ("Gilmore") in view of Biondi et al. ("Biondi") as applied to claim 7, and further in view of Lachmann et al. ("Lachmann").

As per claims 10 and 11, although the modified Gilmore teaches a system for programming a respirator for ventilating a patient wherein the input means includes

means for assigning values to the selected proposed ventilation parameters, the graphical representation of the effect of the proposed ventilation parameters on the breath cycle comprises a time scale, an inspiration indicator and an expiration indicator, the length of the inspiration bar and the expiration bar being a function of the ventilator settings currently used by the processor to control the ventilator (Gilmore: col. 11, line 34 through col. 12, line 48; col. 18, lines 24-37; Biondi: figs. 5, 7-10, 13 and 16; col. 6, lines 1-63), the modified Gilmore does not explicitly disclose inspiration indicators to be in the form of bars. Lachmann teaches a ventilator system for ventilating a patient (Abstract) wherein inspiration and expiration indicators are in the form of bars (figs. 6, 9 and 11; col. 10, lines 45-47). Therefore, it would have been obvious to an artisan at the time of the invention to include Lachmann's teaching of inspiration and expiration indicators being in the form of bars to the modified Gilmore's teaching of inspiration and expiration indicators being in the form of wedges in order to provide users with an implementation preference.

As per claims 12 and 13, the modified Gilmore teaches a system for programming a respirator for ventilating a patient wherein the time scale is associated with the inspiration and expiration bar and is rescaled to be compatible with the combination of the times on the bar (Gilmore: col. 11, line 34 through col. 12, line 48; col. 18, lines 24-37; Biondi: figs. 5, 7-10, 13 and 16; col. 6, lines 1-63; col. 9, lines 9-29; Lachmann: figs. 6, 9 and 11; col. 10, lines 45-47; *inspiration and expiration indicator/bar associated with the times on the time scale, i.e. patient's airway flow (inspiration and expiration) measured and displayed by increments of a sixth of a second*).

Response to Arguments

8. Applicant's arguments with respect to claims 7-13 have been considered but are moot in view of the new ground(s) of rejection.

Inquires

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lê Nguyen whose telephone number is **(571) 272-4068**. The examiner can normally be reached on Monday - Friday from 7:00 am to 3:30 pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, can be reached on (571) 272-4063.

The fax numbers for the organization where this application or proceeding is assigned are as follows:

(703) 872-9306 [Official Communication]

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

LVN
Patent Examiner
May 6, 2005